

## **REMARKS**

Claims 6-23 remain in the application.

The claims remain unchanged from their prior version.

Applicant thanks Examiner Nguyen for indicating that the prior rejection under §112, first paragraph (new matter/written description) has been overcome.

Applicant also notes that while his prior response indicated that a Notice of Appeal accompanied the response, the Notice was inadvertently omitted. A Notice of Appeal is filed herewith.

The following remarks address the issues remaining in the case. The claims have not been amended, so there are no new issues for search. Applicant also respectfully submits that the following comments also do not raise any new issues for consideration, but simply points out more fully the positive limitations of the present claims that are neither taught nor fairly suggested by the Aaron patent (U.S. Patent No. 3,280,407). Applicant therefore submits that entry of this Supplemental Response After Final is warranted.

### **Rejection of Claims 6-9 Under §102(b) in View of Aaron, U.S. Patent No. 3,280,407:**

This rejection is again traversed because the present claims **positively require** a specifically defined type of float that simply is not taught by the Aaron reference. As a consequence this anticipation rejection is improper on its face: the reference does not teach each and every element of the invention **as it is positively recited** in the claims.

All of the pending claims **positively require** a float that is attached to the flexible tubing "at two attachment points." The cup 50 shown in the Aaron Patent **is not** attached to the flexible tubing at two points. The Aaron patent unquestionably fails to teach a float that attaches to the flexible tubing at **two** distinct attachments points (a limitation that is **positively** required by all of the pending claims). It is clearly shown in Figs. 1 and 5 of the Aaron patent that the cup 50 contacts the flexible tubing at only

one attachment point, 72. The cup 50 is the only part of the Aaron device that is even remotely analogous to the float required by Applicant's claims. The present claims, however, positively require that the float that is attached to the flexible tubing be attached "at two attachment points." This is a positively recited limitation to the present invention that is nowhere taught in the Aaron patent. Thus, this rejection is improper on those grounds alone.

Moreover, the present claims also positively define the location of the two attachment points: one attachment point is next to the first end of the flexible tubing; the second attachment point is next to the second end of the flexible tubing "such that the second end of the tubing is submerged" within liquid in the tank. Thus, not only does the Aaron Patent fail to show a float attached at two points (as positively required by the claims), the second end of Aaron's flexible tubing is not submerged. Such an arrangement is not shown in the Aaron Patent. The second end of Aaron's tube is open to the air; it is not submerged within the water in the tank.

As noted earlier, comparing Applicant's Fig. 6 to Aaron's Fig. 1 clearly illustrates this claimed difference. In Applicant's Fig. 6, the second end 35 of the flexible tubing is clearly submerged within the liquid in the tank. There is no additional conduit or tubing that elevates Applicant's second end 35 of the tubing above the water line. The second end 35 is literally submerged in the water, and the claims positively require this arrangement.

In contrast, in the Aaron device, the second end of flexible tubing 72 is attached to the outer wall 54 of the cup 50. The result is that the passage formed by Aaron's flexible ends above the water line. Thus, Aaron's corresponding structure does not include a flexible tubing whose second end is submerged within the water in the tank. Aaron's Fig. 1, for example, quite clearly shows that opening of the second end of Aaron's tube is not submerged below the water line, as is required by the present claims, but is open to the air above the tank.

Applicants therefore submit that the rejection of Claims 6-9 under §102(b) in view of Aaron is improper. Withdrawal of the same is respectfully requested.

**Rejection of Claims 10-23 Under §103(a) in View of Aaron in Combination with Applicant's Disclosure at Page 5, Second Full Paragraph:**

This rejection is respectfully traversed.

The only structure in the Aaron Patent that corresponds to the "float" recited in the claims is the cup 50 shown in Aaron's Figs. 1 and 5. No other element of the Aaron device functions as a float. Again, see Aaron at column 2, line 70: "It can be seen that if the water level rises, due to buoyancy the cup 50 will rise and bear against the cover...." The cup 50 of Aaron contacts the flexible tubing at only a single attachment point, 72. Thus, Aaron fails to teach a float that attaches to the flexible tubing at two attachments points (a limitation that is positively required by all of the pending claims).

And there is no teaching whatsoever in Aaron to suggest modifying Aaron's device so that it includes a float as recited in Applicant's claims. Nor do Applicant's own statement provide such a motivation (as alleged by the Office).

The statement cited by the Office is not an admission against interest and is not an admission that the fill tube is in the prior art. The entire passage relied upon by the Office states, in full: "It is also an important note that fill tube 29, used to fill the toilet bowl, is not necessarily need with this type of flush valve." The Applicant is quite clearly referring to his own invention, not to any generic "type" of flush valve. Applicant therefore traverses the reliance upon this statement as being an improper use of Applicant's own disclosure, which is not part of the prior art.

Lastly, Applicant notes that all of Claims 10-23 require a fill valve and fill tube, neither of which are shown or suggested by Aaron at all. Thus, whether or not the invention can be made to function in the absence of this element is irrelevant because the claims at issue positively require a fill valve and fill tube. As noted above Applicant's statement relied upon by the Office is not an admission against interest, nor an admission of what is in the prior art. In short, the claims require a fill tube/fill valve, and the Aaron reference neither teaches nor suggests using a fill tube/fill valve.

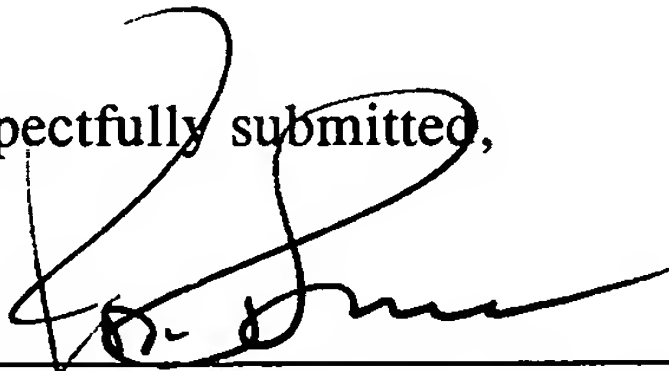
As a consequence, the combination of Aaron with Applicant's own disclosure (which, as noted above, cannot be used in this fashion) is improper.

Applicant therefore submits that the rejection of Claims 10-23 under §103(a) in view of Aaron in combination with Applicant's disclosure at page 5, second full paragraph is improper. Withdrawal of the same is respectfully requested.

### **CONCLUSION**

Applicants submit that the application is now in condition for allowance. Early notification of such action is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Leone', is written over a horizontal line.

**Joseph T. Leone, Reg. No. 37,170**  
DEWITT ROSS & STEVENS S.C.  
8000 Excelsior Drive, Suite 401  
Madison, Wisconsin 53717-1914  
Telephone: (608) 831-2100  
Facsimile: (608) 831-2106